

REMARKS

This Amendment responds to the Office Action dated August 4, 2008, in which the Examiner rejected claims 1, 3-5, 8-14 and 17-19 under 35 U.S.C. § 102(b) and rejected claims 6-7 and 15-16 under 35 U.S.C. § 103.

As indicated above, claims 1 and 11 have been amended in order to make explicit what is implicit in the claims. The amendment is unrelated to a statutory requirement for patentability.

Claim 1 claims a data transmission controlling method and claim 11 claims a data transmission system. The method and system include transmitting encrypted data over a first communication channel from a data transmitting means to a data receiving means. A request for a decryption key is transmitted over a second communication channel from the data receiving means to the data transmitting means at least (a) when the data receiving means fails to correctly receive the decryption key, (b) when a new data receiving means is connected, and (c) when a data receiving means rejoins connection after a failure. The second communication channel has a smaller capacity than the first communication channel and permits bi-directional communication.

By transmitting a request for a decryption key over a second communication channel from the receiving means to the transmitting means at least when the data receiving means fails to correctly receive a decryption key as claimed in claims 1 and 11, the claimed invention provides a data transmission control method and apparatus which allows the data transmitter to know whether the data sent to the data receiver has been correctly received. The prior art does not show, teach or suggest the invention as claimed in claims 1 and 11.

Claims 1, 3-5, 8-14 and 17-19 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Seth-Smith, et al.* (U.S. Patent No. 4,829,569).

Seth-Smith, et al. appears to disclose assembled teletex, video and audio signal is encrypted and/or scrambled. Subscriber identification portion of the addressed packet is transmitted in clear text, that is, is not encrypted so that it can be detected without decryption. The address packet further contains certain cipher key information used in decrypting system control data (Col. 6, lines 30-43). The composite, encrypted signal is transmitted via satellite 20 by a landline, or by a combination of both to receiving antenna 22 (Col. 6, lines 49-52). The user is permitted to communicate with the broadcaster. Ordinarily, the user will only need to communicate with the broadcaster sporadically, for example to request addition of a service or to pay a bill or the like. Conventional communication facilities such as a telephone system or the mail are suited for this function (Col. 6, line 65 – Col. 7, line 4). FIG. 15 shows decryption of incoming data. The incoming data supplied to a decryption algorithm. The keys may comprise one of several keys-of-the-month stored in EEPROM after supply to the decoder as part of an individually addressed packet, the secret serial number stored in the microprocessor at manufacture and/or the system key transmitted as part of the system data (Col. 21, lines 21 – 30).

Thus, *Seth-Smith, et al.* merely discloses keys for decryption which are stored in a EEPROM, stored in the microprocessor at manufacture and/or transmitted as part of the system data. Nothing in *Seth-Smith, et al.* shows, teaches or suggests (a) transmitting encrypted data over a first communication channel and transmitting a request for a decryption key over a second communication channel, and (b) transmitting a request for a decryption key at least (1) when a data receiving means fails to correctly receive the decryption key, (2) when a new data receiving means is connected, and (3) when a data receiving means rejoins connection after a failure as claimed in claims 1 and 11. Rather, *Seth-Smith, et al.* merely discloses the system key is transmitted as part of the system data.

Since nothing in *Seth-Smith, et al.* shows, teaches or suggests (a) transmitting encrypted data over a first communication channel and transmitting a request for a decryption key over a second communication channel, and (b) transmitting the request for a decryption key at least (1) when a data receiving means fails to correctly receive the decryption key, (2) when a new data receiving means is connected, and (3) when a data receiving means rejoins connection after a failure as claimed in claims 1 and 11, Applicant respectfully requests the Examiner withdraws the rejection to claims 1 and 11 under 35 U.S.C. § 102(b).

Claims 3-5, 8-10, 12-14 and 17-19 depend from claims 1 and 11 and recite additional features. Applicant respectfully submits that claims 3-5, 8-10, 12-14 and 17-19 would not have been anticipated within the meaning of 35 U.S.C. § 102(b) over *Seth-Smith, et al.*, at least for the reasons as set forth above. Therefore, Applicant respectfully requests the Examiner withdraws the rejection to claims 3-5, 8-10, 12-14 and 17-19 under 35 U.S.C. § 102(b).

Claims 6-7 and 15-16 were rejected under 35 U.S.C. § 103 as being unpatentable over *Seth-Smith, et al.*, in view of *Mueller* (U.S. Patent No. 5,602,917).

Applicant respectfully traverses the Examiner's rejection of the claims under 35 U.S.C. § 103. The claims have been reviewed in light of the Office Action, and for reasons which will be set forth below, Applicant respectfully requests the Examiner withdraws the rejection to the claims and allows the claims to issue.

As discussed above, since nothing in *Seth-Smith, et al.* shows, teaches or suggests the primary features as claimed in claims 1 and 11, Applicant respectfully submits that the combination of the primary reference with the secondary reference to *Mueller* will not overcome the deficiencies of the primary reference. Therefore, Applicant respectfully requests the Examiner withdraws the rejection to claims 6-7 and 15-16 under 35 U.S.C. § 103.

Thus it now appears that the application is in condition for reconsideration and allowance. Reconsideration and allowance at an early date are respectfully requested. Should the Examiner find that the application is not now in condition for allowance, Applicant respectfully requests the Examiner enters this amendment for purposes of appeal.

CONCLUSION

If for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is requested to contact, by telephone, the Applicant's undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed within the currently set shortened statutory period, Applicant respectfully petitions for an appropriate extension of time. The fees for such extension of time may be charged to Deposit Account No. 50-0320.

In the event that any additional fees are due with this paper, please charge our Deposit Account No. 05-0320.

Respectfully submitted,

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Attorney for Applicant

Date: October 3, 2008

By:

A handwritten signature in black ink, appearing to read 'EMAS', written over a horizontal line.

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